

Why Should Venezuela Re-Join the ICSID Convention?

Julio-César Betancourt*

REINO UNIDO

AVANI, Nro. 2, 2021. pp. 353-379

Abstract: In 2012, Venezuela withdrew from the ICSID Convention. Although Venezuela remains open to foreign investment, it can be argued that its withdrawal from the Convention may have tarnished foreign investors' confidence in the Venezuelan oil market. Venezuela continues to have billions of proven reserves of extra-heavy crude oil. The production of this type of oil requires a significant amount of resources, which the country does not currently have. Thus, the recovery of Venezuela's oil industry (in particular) and the country's economy (in general) demands a significant inflow of foreign investment. This article explains why Venezuela should re-join the ICSID Convention as a means of reviving Venezuela's economy.

Keywords: Venezuelan Economy, ICSID Convention, Foreign Investment.

¿Por qué Venezuela debería volver a ratificar el Convenio de CIADI?

Resumen: *En el 2012, Venezuela denuncia el Convenio de CIADI. Aunque Venezuela permanece abierta a la inversión extranjera, es claro que la rescisión de dicha Convención podría haber afectado la confianza de los inversionistas extranjeros en el mercado petrolero venezolano. Venezuela posee billones de reservas de petróleo extrapesado. La producción de este tipo de petróleo demanda una gran cantidad de recursos que dicho país, actualmente, no posee. De manera que la recuperación de la industria petrolera (en particular) y de la economía del país (en general) exige una entrada importante de capital extranjero. Este artículo explica por qué Venezuela debería volver a ratificar el Convenio de CIADI como medida para resucitar su economía.*

Palabras Claves: *Economía de Venezuela, Convenio de CIADI, Inversión Extranjera.*

Recibido: 29/07/2021

Aprobado: 19/12/2021

* Julio-Cesar Betancourt holds a PhD in Private Law from the University of Salamanca (*cum laude*). He is the author of 'El Contrato de Arbitraje Internacional' (Tirant lo Blanch 2018), and the editor of a number of other books, including 'Defining Issues in International Arbitration' (Oxford University Press 2016). He is currently the Director of the London Arbitration Programme. He was formerly a Junior Academic Visitor at the University of Oxford's Commercial Law Centre, and Head of Research and Academic Affairs at the Chartered Institute of Arbitrators' Headquarters in London, United Kingdom.

Why Should Venezuela Re-Join the ICSID Convention?

Julio-César Betancourt*

REINO UNIDO

AVANI, Nro. 2, 2021. pp. 353-379

SUMMARY:

INTRODUCTION. 1. A snapshot of the Venezuelan economy. 2. the reasons behind Venezuela's withdrawal from the ICSID convention. 3. Venezuela's performance in ICSID arbitration proceedings. 4. what can be learned from Ecuador's decision to re-join the ICSID Convention? 5. the relationship between ICSID's dispute settlement system and the outcome of arbitral proceedings. CONCLUSION. BIBLIOGRAPHY.

INTRODUCTION

The Convention on the Settlement of Investment Disputes Between States and Nationals of Other States of 1965 (otherwise known as the Washington or ICSID Convention)¹ provides for the establishment of a centre 'for the settlement by conciliation or arbitration of investment disputes between States and foreign investors',² i.e., the International Centre for Settlement of Investment Disputes (ICSID).³ The ICSID Convention has been ratified by more than 150 Contracting States, including the vast majority of Latin-American countries.⁴

The ICSID Convention does not define the terms conciliation or arbitration. ICSID conciliation⁵ refers to an amicable joint decision-making process that allows a conciliation commission to facilitate discussions between the parties so as to bring

* Julio-Cesar Betancourt holds a PhD in Private Law from the University of Salamanca (*cum laude*). He is the author of 'El Contrato de Arbitraje Internacional' (Tirant lo Blanch 2018), and the editor of a number of other books, including 'Defining Issues in International Arbitration' (Oxford University Press 2016). He is currently the Director of the London Arbitration Programme. He was formerly a Junior Academic Visitor at the University of Oxford's Commercial Law Centre, and Head of Research and Academic Affairs at the Chartered Institute of Arbitrators' Headquarters in London, United Kingdom.

¹ As for the history of the ICSID Convention, ICSID, 'The History of the ICSID Convention' <<https://icsid.worldbank.org/resources/publications/the-history-of-the-icsid-convention>> accessed 27 July 2021.

² Antonio R. Parra, *The History of ICSID* (Oxford University Press 2012) 1.

³ See article 1(1) of the ICSID Convention.

⁴ These include Argentina (1994); Chile (1991); Colombia (1997); Costa Rica (1993); Ecuador (2021); El Salvador (1984); Guatemala (2003); Guyana (1969); Haiti (2009); Honduras (1989); Mexico (2018); Nicaragua (1995); Panama (1996); Paraguay (1983); Peru (1993); and Uruguay (2000). For further details, see ICSID, 'Database of ICSID Member States' <<https://icsid.worldbank.org/about/member-states/database-of-member-states>> accessed 27 July 2021. The adoption of the ICSID Convention by Latin American countries constitutes a significant reversal of the region's original policy on the creation of a centre for conciliation or arbitration, which is commonly known in the literature as 'the No of Tokyo', Rodrigo Polanco Lazo, 'The No of Tokyo Revisited: or How Developed Countries Learned to Start Worrying and Love the Calvo Doctrine' (2015) 30(1) ICSID Review 182.

⁵ For an analysis of ICSID conciliation, Frauke Nitschke, 'The ICSID Conciliation Rules in Practice' in Catharine Titi and Katia Fach Gómez (eds), *Mediation in International Commercial and Investment Disputes* (Oxford University Press 2019) Ch 7.

about a mutually satisfactory agreement that puts an end to the parties' dispute,⁶ whereas ICSID arbitration⁷ concerns an adversarial decision-making process whereby an arbitral tribunal is empowered to make a decision as to the dispute in question,⁸ which is tantamount to a court judgment.⁹

Research shows that, between 2015 and 2020, there were 50 requests for ICSID arbitration and no requests for ICSID conciliation (2015); 42 requests for ICSID arbitration and 1 request for ICSID conciliation (2016); 49 requests for ICSID arbitration and no requests for ICSID conciliation (2017); 49 requests for ICSID arbitration and 1 request for ICSID conciliation (2018); 35 requests for ICSID arbitration and 1 request for ICSID conciliation (2019); and 54 requests for ICSID arbitration and 1 request for ICSID conciliation (2020).¹⁰

In the light of those statistics, it is evident that, when it comes to dealing with investment disputes, parties tend to rely on the ICSID Convention in order to institute ICSID arbitration in preference to ICSID conciliation proceedings. This is probably due to the fact that almost 90% of conciliation proceedings conducted under the ICSID Convention do not result in an agreement,¹¹ whereas 65% of arbitral proceedings carried out under the ICSID Convention are decided by an arbitral tribunal.¹²

Venezuela ratified the ICSID Convention on 2 May 1995.¹³ On 24 January 2012, however, Venezuela sought to withdraw its consent to be bound by such a convention (pursuant to article 71 of the ICSID Convention),¹⁴ thereby becoming the third Latin-American country to effectively give up its ICSID membership. Venezuela's decision follows that of Bolivia¹⁵ and Ecuador,¹⁶ which became the first two countries to withdraw from the ICSID Convention in 2007 and 2009, respectively.¹⁷

⁶ As per articles 32 to 35 of the ICSID Convention.

⁷ For an introduction to ICSID arbitration, Lucy Reed, Jan Paulsson, and Nigel Blackaby, *Guide to ICSID Arbitration* (2nd edn, Wolters Kluwer 2011) 1-468.

⁸ As per articles 36 to 55 of the ICSID Convention.

⁹ Pursuant to article 54(1) of the ICSID Convention.

¹⁰ ICSID, *ICSID Caseload – Statistics: Issue 2021-1* (World Bank Group 2021) 8.

¹¹ *ibid* 15.

¹² *ibid* 13.

¹³ Email from ICSID Secretariat to author (20 July 2021).

¹⁴ ICSID, 'Venezuela Submits a Notice under Article 71 of the ICSID Convention' (26 January 2012) <<https://icsid.worldbank.org/news-and-events/news-releases/venezuela-submits-notice-under-article-71-icsid-convention>> accessed 27 July 2021.

¹⁵ ICSID, 'Denunciation of ICSID Convention' (16 May 2007) <<https://icsid.worldbank.org/news-and-events/news-releases/denunciation-icsid-convention>> accessed 27 July 2021.

¹⁶ ICSID, 'Denunciation of the ICSID Convention by Ecuador' (9 July 2009) <<https://icsid.worldbank.org/news-and-events/news-releases/denunciation-icsid-convention-ecuador>> accessed 27 July 2021.

¹⁷ See, generally, Ignacio A. Vincentelli, 'The Uncertain Future of ICSID in Latin America' (2010) 16(3) *Law and Business Review of the Americas* 409-456.

Venezuela's withdrawal from the ICSID Convention is likely to have caused consternation among some foreign investors, who may have regarded access to ICSID arbitration as a "precondition" for their investment.¹⁸ It will be recalled that 'early investment treaties did not allow foreign investors to bring arbitrations against host states', whereas the ICSID Convention, essentially, enables 'all investors covered by the treaty to file arbitrations against the host state without having to first go through domestic courts'.¹⁹

As Dr. Antonio Parra explains: 'In the case of ICSID, it was foreseen that the developing countries might foster the confidence necessary to attract and retain private foreign investments by consenting to submit related disputes to the jurisdiction of the Centre'.²⁰ No doubt Venezuela's decision is also likely to have affected future investors' confidence in the Venezuelan oil market, which would be compelled to consider alternatives to ICSID arbitration so as to avoid having to litigate their disputes in the Venezuelan courts.²¹

According to the World Bank Group's Doing Business Report 2020, which compares business regulations in 190 economies, Venezuela ranks 188th in the World Bank's ranking²² — the lowest level among the rest of Latin-American countries. Whilst the Report is primarily intended to measure 'regulation from the point of view of domestic entrepreneurs. The efficiency of regulation affecting domestic firms [has been] correlated with regulation affecting [foreign direct investment (FDI)]'.²³

¹⁸ While access to ICSID arbitration may not have been a decisive factor in foreign investors' decision to put their money in Venezuela, it is clear that ICSID 'facilitated the transformation of the role traditionally played by the arbitration agreement as the basis for jurisdiction, thereby enabling increased access to arbitration', Carolyn B. Lamm and Abby Cohen Smutny, 'The International Centre for Settlement of Investment Disputes: Responses to Problems and Changing Requirements' (1998) 64(5) *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management* 23. Furthermore, research shows that, from 1987 to 2020, there has been an upward trend towards the initiation of ICSID (as opposed to non-ICSID) arbitrations, UNCTAD, *World Investment Report 2021: Investing in Sustainable Recovery* (United Nations 2021) 129. For an interesting paper on the question of ICSID and Non-ICSID arbitrations, Yas Banifatemi, 'Defending Investment Treaty Awards: Is There an ICSID Advantage?' in Albert Jan Van den Berg (ed), *50 Years of the New York Convention: ICCA Congress Series*, vol 14 (Kluwer Law International 2009) 318-326.

¹⁹ Jonathan Bonnitcha, Lauge N. Skovgaard Poulsen, and Michael Waibel, *The Political Economy of the Investment Treaty Regime* (Oxford University Press 2017) 5, 24. This is, of course, subject to ICSID's jurisdictional requirements, see, in particular, Julian David Mathew Lew, 'ICSID Arbitration: Special Features and Recent Developments', in Norbert Horn and Stefan Michael Kroll (eds), *Arbitrating Foreign Investment Disputes: Procedural and Substantive Legal Aspects, Studies in Transnational Economic Law*, vol 19 (Kluwer Law International 2004) 269.

²⁰ Parra (n 2) 324.

²¹ The default position is that 'In the absence of an agreement to the contrary, an investment dispute between a state and a foreign investor would normally have to be settled by the host state's courts', Rudolf Dolzer and Christoph Schreuer, *Principles of International Investment Law* (2nd edn, Oxford University Press 2012) 235.

²² World Bank Group, *Doing Business Doing Business: 2020 Comparing Business Regulation in 190 Economies* (The World Bank 2020) 4.

²³ *ibid* 37

Although, for all practical purposes, Venezuela remains open to foreign investors,²⁴ it can be argued that its withdrawal from the ICSID Convention may have trashed, even more, Venezuelan economy. The literature is devoid of a systematic study aimed at examining the context of such a withdrawal. This article is intended to fill this gap. It provides a concise and yet complete account of Venezuela's situation as a former ICSID member and explains why Venezuela should re-join the ICSID Convention.²⁵

The article has been structured as follows. Part I offers a snapshot of the Venezuelan economy. Part II focuses on the reasons behind Venezuela's withdrawal from the ICSID Convention. Part III deals with Venezuela's performance in ICSID arbitration proceedings. Part IV examines whether Venezuela should follow Ecuador's path to investment arbitration. Part V looks at the relationship between ICSID's dispute settlement system and the outcome of arbitral proceedings. Part VI draws some concluding remarks.

1. A snapshot of the Venezuelan economy

Venezuela became an oil producer in 1914²⁶ and is one of the founding members of the Organization of the Petroleum Exporting Countries (OPEC). According to Statista, Venezuela has more than 300 billion barrels of proven crude oil reserves,²⁷ which represents approximately 17.5% of the world's oil reserves.²⁸ Not surprisingly, Venezuela has been, and continues to be, 'highly dependent on oil revenues, which account for almost all export earnings and nearly half of the government's revenue'.²⁹

²⁴ For an overview of the Venezuelan investment market, Santander, 'Venezuela: Foreign Investment' <www.santandertrade.com/en/portal/establish-overseas/venezuela/investing> accessed 27 July 2021.

²⁵ This article will not address the overall consequences of a withdrawal notice under articles 71 and 72 of the ICSID Convention, a topic which has been sufficiently dealt in previous works such as, for example, Emmanuel Gaillard, 'The Denunciation of the ICSID Convention' (2007) 237(122) *New York Journal* 1-3; Christoph Schreuer, 'Denunciation of the ICSID Convention and Consent to Arbitration' in Michael Waibel and others (eds), *The Backlash Against Investment Arbitration: Perceptions and Reality* (Kluwer Law International 2010) 353-368; UNCTAD, *Denunciation of the ICSID Convention and BITs: Impact On Investor-State Claims* (United Nations 2010) 2 IIA 1-10; Victorino J. Tejera, 'Unraveling ICSID's Denunciation: Understanding the Interaction Between Articles 71 and 72 of the ICSID Convention' (2014) 20(3) *ILSA Journal of International & Comparative Law* 423-438; Guled Yusuf and Olga Owczarek, 'Fábrica de Vidrios Los Andes, CA and Owens-Illinois de Venezuela, CA v Bolivarian Republic of Venezuela Removing the Sword of Damocles: ICSID Denunciation under Articles 71 and 72' (2018) 33(2) *ICSID Review* 331-339; Shreya Jha and Vivek Sharma, 'Denunciation under the ICSID Convention: Right of State versus Remedy for Investor' *CILJ Blog Post* (Edward Elgar Publishing, 26 September 2019) <<http://cilj.co.uk/2019/09/26/denunciation-under-the-icsid-convention-right-of-state-versus-remedy-for-investor/>> accessed 27 July 2021; Hugh Carlson, Anton Chaevitch, and Elizabeth Snodgrass, 'Three Notable Issues from the Venezuela Experience' in Gloria Maria Alvarez, Melanie Riofrio Piché, and Felipe V. Sperandio (eds), *International Arbitration in Latin America: Energy and Natural Resources Disputes* (Kluwer Law International 2021) 329-348.

²⁶ OPEC, 'Venezuela: Facts and Figures' <https://www.opec.org/opec_web/en/about_us/171.htm> accessed 27 July 2021.

²⁷ STATISTA, 'Proved crude oil reserves in Venezuela from 2009 to 2021 (in billion barrels)' <<https://www.statista.com/statistics/961643/crude-oil-reserves-venezuela/>> accessed 27 July 2021.

²⁸ STATISTA, 'Distribution of oil reserves worldwide in 2020: By Country' <<https://www.statista.com/statistics/237065/share-of-oil-reserves-of-the-leading-ten-countries/>> accessed 27 July 2021.

²⁹ Central Intelligence Agency, 'The World Factbook: Venezuela' <<https://www.cia.gov/the-world-factbook/countries/venezuela/#economy>> accessed 27 July 2021.

It can be said that Venezuela's reliance on the oil sector may have been one of the key factors in its willingness to conclude certain treaties (such as the ICSID Convention) with other countries.³⁰ By the time the ICSID Convention was concluded, however, 'Venezuela was the richest country in Latin America'.³¹ Yet the golden age of Venezuela's economy eventually suffered a great shock in the 1980s and plunged into chaos in the 1990s.³² This may help to explain why Venezuela chose to ratify such a Convention in 1995.³³

Four years later, President Rafael Caldera 'handed the presidential sash to Hugo Chávez',³⁴ a socialist who, inter alia, (1) took control of the Venezuelan oil industry;³⁵ (2) led a 'program of nationalization that included the takeover of the petroleum sector',³⁶ (3) threatened not to comply with ICSID's arbitral decisions;³⁷ and (4) promoted 'alternatives to ... the economic policies that many Latin Americans felt were pushed on them by the United States and by international lending agencies such as the World Bank and the International Monetary Fund'.³⁸

In 2011, the year before Venezuela withdrew from the ICSID Convention, *Petróleos de Venezuela* (PDVSA), a state-owned company that is primarily responsible for the operation of the Venezuelan oil industry,³⁹ faced serious financial difficulties, with the result that 'Production dropped despite a global boom in oil prices'.⁴⁰ Even so, in 2012,

³⁰ Cf Jaime Martínez Esteves and Rubén Darío Valdivieso, 'Venezuela: Oil & Gas Laws and Regulations 2021' <<https://iclg.com/practice-areas/oil-and-gas-laws-and-regulations/venezuela>> accessed 27 July 2021.

³¹ Anthony Spanakos, 'Venezuela Before Chávez: Anatomy of an Economic Collapse by Ricardo Hausmann and Francisco R. Rodríguez' (Americas Quarterly 28 July 2014) <<https://www.americasquarterly.org/fulltextarticle/venezuela-before-chavez-anatomy-of-an-economic-collapse-by-ricardo-hausmann-and-francisco-r-rodriguez/>> accessed 27 July 2021.

³² For further details, see Max Fisher and Amanda Taub, 'How Venezuela went from the richest economy in South America to the brink of financial ruin' *The Independent* (21 May 2017) <https://www.independent.co.uk/news/long_reads/how-venezuela-went-richest-economy-south-america-brink-financial-ruin-a7740616.html> accessed 27 July 2021; Javier Corrales, 'Venezuela in the 1980s, the 1990s and beyond' (Harvard Review of Latin America 1999) <<https://archive.revista.drclas.harvard.edu/book/venezuela-1980s-1990s-and-beyond>> accessed 27 July 2021; Mark Weisbrot and Luis Sandoval, *The Venezuelan Economy in the Chávez Years* (Center for Economic and Policy Research 2007) 1-22.

³³ As some commentators have put it, 'The first and most important reason why developing countries entered into investment treaties was the belief that it would help them attract foreign investment', Bonnitcha, Poulsen, and Waibel (n 19) 207.

³⁴ Phil Gunson, 'Rafael Caldera obituary' *The Guardian* (4 January 2010) <<https://www.theguardian.com/theguardian/2010/jan/04/rafael-caldera-obituary>> accessed 27 July 2021.

³⁵ Phil Gunson, 'Hugo Chávez obituary' *The Guardian* (5 March 2013) <<https://www.theguardian.com/world/2013/mar/05/hugo-chavez>> accessed 27 July 2021.

³⁶ Jennifer L. McCoy, 'The Hugo Chávez Presidency', *Encyclopædia Britannica* <<https://www.britannica.com/place/Venezuela/The-Hugo-Chavez-presidency>> accessed 27 July 2021.

³⁷ CNN Wire Staff, 'Chavez says he won't respect World Bank panel's decision' *CNN Business* (9 January 2012) <<https://edition.cnn.com/2012/01/09/business/venezuela-exxon/index.html>> accessed 27 July 2021.

³⁸ Brian A. Nelson, 'Legacy of Hugo Chávez', *Encyclopædia Britannica* <<https://www.britannica.com/biography/Hugo-Chavez/Legacy>> accessed 27 July 2021.

³⁹ PDVSA, 'Somos PDVSA: La Industria' <<http://www.pdvsa.com/>> accessed 27 July 2021.

⁴⁰ Max Fisher and Amanda Taub, 'How Venezuela Stumbled to the Brink of Collapse' *The New York Times* (14 May 2017) <<https://www.nytimes.com/2017/05/14/world/americas/venezuela-collapse-analysis-interpret.html>> accessed 27 July 2021.

the year in which Venezuela notified the World Bank of its intention to withdraw from the ICSID Convention, Venezuela's gross domestic product in current prices (GDP) reached US\$330 billion.⁴¹

From 2012 onwards, though, Venezuela's economy has been on a downward spiral, with its GDP declining by some 86% in 2020 (when compared to its GDP levels at the end of 2012).⁴² In the absence of official statistics, it would be difficult to estimate the impact of Venezuela's withdrawal from the ICSID Convention on the country's economy. Nonetheless, it can be assumed that it may have somehow contributed to the decline of its economic performance, which began to be driven by foreign investment 'just before World War I'.⁴³

It is said that, during the first years of the dictatorship of General Juan Vicente Gómez — a politically controversial figure who 'bargained shrewdly with the United States, British, and Dutch petroleum interests for the benefit of Venezuela [shortly after the discovery of oil near Lake Maracaibo in 1914]⁴⁴ — 'more than 100 foreign oil companies [were allowed to invest in the country] and, by 1928, Venezuela [had become not only] the world's second-biggest petroleum exporter',⁴⁵ but also and the world's first exporter of hydrocarbons.⁴⁶

But things have changed dramatically since 1928. In accordance with the World Bank's Worldwide Governance Indicators (i.e., rule of law, lack of corruption, and political stability),⁴⁷ Venezuela's economic health is so poor that foreign investors would be ill-advised to invest in such a country.⁴⁸ Some economists have argued that 'poor governance, corruption and misguided policies of President Nicolás Maduro and his predecessor, Hugo Chávez, have fueled runaway inflation, shuttered businesses and brought the country to its knees'.⁴⁹

⁴¹ STATISTA, 'Venezuela: Gross domestic product (GDP) in current prices from 1984 to 2022 (in billion U.S. dollars)' <<https://www.statista.com/statistics/370937/gross-domestic-product-gdp-in-venezuela/>> accessed 27 July 2021.

⁴² *ibid.*

⁴³ Jennifer L. McCoy, 'The Andinos of Venezuela', *Encyclopædia Britannica* <<https://www.britannica.com/place/Venezuela/The-Andinos>> accessed 27 July 2021.

⁴⁴ The Editors, 'Juan Vicente Gómez: Venezuelan dictator', *Encyclopædia Britannica* <<https://www.britannica.com/biography/Juan-Vicente-Gomez>> accessed 27 July 2021.

⁴⁵ Patrick J. Kiger, 'How Venezuela Fell from the Richest Country in South America into Crisis' (History 9 May 2019) <<https://www.history.com/news/venezuela-chavez-maduro-crisis>> accessed 27 July 2021.

⁴⁶ Jesús Francisco Rodríguez López, 'La Apertura Petrolera en Venezuela' (MSc Thesis, Universidad de Los Andes 1992-1995) 25.

⁴⁷ Federico Carril-Caccia, Juliette Milgram-Baleix, and Jordi Paniagua, 'Foreign Direct Investment in oil-abundant countries: The role of institutions' (2019) 14(4) PLoS ONE 8.

⁴⁸ Some commentators have, quite rightly, expounded that 'Opportunities for investment exist throughout the world, and the market for capital placement is driven by the realistic rate of return investors can expect. The real rate of return, meanwhile, depends on various risks — especially political risks — to which a given investment will be subjected', Borzu Sabahi, Noah Rubins, and Don Wallace, Jr., *Investor-State Arbitration* (2nd edn, Oxford University Press 2019) 4-5.

⁴⁹ Anatoly Kurmanav, 'Venezuela's Collapse Is the Worst Outside of War in Decades, Economists Say' *The New York Times* (17 May 2019) <<https://www.nytimes.com/2019/05/17/world/americas/venezuela-economy.html>> accessed 27 July 2021.

At present, Venezuela's economy continues to struggle with little or no realistic prospect of recovery. In the years following Maduro's election, crude oil production has fallen from nearly 2.5 million barrels per day in 2012⁵⁰ to 'an average of 550 thousand barrels per day' in the first trimester of 2021.⁵¹ Without a clear and sufficiently robust policy on the attraction of FDI, it is clear that the future of Venezuela's oil industry – i.e., the backbone of the country's economy – is rather bleak.⁵²

2. The reasons behind Venezuela's withdrawal from the ICSID convention

Although Venezuela's exit from the ICSID Convention was regarded by the Venezuelan government as a constitutional matter, a closer scrutiny of the arguments raised by the executive branch of government may lead to a different conclusion. In a press release dated 28 January 2012, the Venezuelan Committee for the Abolition of Illegitimate Debt stated, among other things, that the provisions contained in the ICSID Convention were "invalidated" by article 151 of the Venezuelan Constitution of 1999.⁵³

It is unclear what the government meant by "invalidated", mainly because article 151 of the Venezuelan Constitution does not seek to question the validity of international treaties. Nor does it amount to a rule of law leading to an automatic invalidation of treaty provisions. Nor is it intended to create an exclusive jurisdiction (*rectius*: competence) in favour of the Venezuelan national courts so as to prevent parties to public interest contracts from agreeing to arbitrate their disputes. Quite the opposite, it stipulates that:

In the public interest contracts, *unless inapplicable by reason of the nature of such contracts*, a clause shall be deemed included even if not expressed, whereby any doubts and controversies which may raise concerning such contracts and which cannot be resolved amicably by the contracting parties, shall be decided by the competent courts of the Republic, in accordance with its laws and shall not on any grounds or for any reason give rise to foreign claims.⁵⁴
(italics added)

Nowhere does Article 151 of the Venezuelan Constitution say that the ICSID Convention, a treaty that: (1) was validly entered into by Venezuela; and (2) provides for the settlement of disputes by means of arbitration (which is actually encouraged by virtue of article 258 of the Venezuelan Constitution)⁵⁵ should be deemed invalid. What

⁵⁰ BBC News, 'Venezuela: All you need to know about the crisis in nine charts' (4 February 2019) <<https://www.bbc.co.uk/news/world-latin-america-46999668>> accessed 27 July 2021.

⁵¹ STATISTA, 'Crude oil production in Venezuela from January 2019 to February 2021 (in 1,000 barrels per day)' <<https://www.statista.com/statistics/1240421/crude-oil-production-monthly-venezuela/>> accessed 27 July 2021.

⁵² See, generally, Igor Hernández and Francisco Monaldi, 'Weathering Collapse: An Assessment of the Financial and Operational Situation of the Venezuelan Oil Industry' (2016) Center for International Development at Harvard University Working Paper No. 327, 1-69 <<https://dash.harvard.edu/handle/1/37366358>> accessed 27 July 2021.

⁵³ CADTM, 'Gobierno Bolivariano denuncia convenio con CIADI' (28 January 2012) <<http://www.cadtm.org/Gobierno-Bolivariano-denuncia>> accessed 27 July 2021.

⁵⁴ Constitute, 'www.constituteproject.org' accessed 27 July 2021.

⁵⁵ It states, inter alia, that, 'The law shall encourage arbitration, conciliation, mediation and any other alternative means for resolving conflicts, Constitute (n 54).

it does say is that, in public interest contracts, there is an implied term that disputes relating to such contracts are to be entertained by the national courts, unless otherwise stated.

Article 151 of the Venezuelan Constitution makes clear that such term may be “inapplicable” to certain contracts, which, by their very nature, may require a separate dispute settlement forum other than the national courts. Thus, there is nothing in article 151, or in any other provision of the Venezuelan Constitution, to suggest that the ICSID Convention was (or is likely to be) contrary to the Constitution and, let alone, that the courts are expected to retain exclusive jurisdiction over the settlement of investment-related disputes.⁵⁶

That is not to say that, under Venezuelan law, the government is constitutionally precluded from adopting legislative measures aimed at conferring exclusive jurisdiction upon the national courts for the purposes of determining these types of disputes, regardless of how draconian they might be. That is precisely what the Venezuelan government decided to do in 2017 with the enactment of a new law which grants jurisdiction to the national courts over matters concerning foreign investment.⁵⁷

Nor does that mean that Venezuela would not be entitled to pass legislation so as to rely on the rule of exhaustion of local remedies, which is perfectly possible in accordance with article 26 of the ICSID Convention, which provides that ‘... A Contracting State may require the exhaustion of local administrative or judicial remedies as a condition of its consent to arbitration under this Convention’, although, in investment treaty practice, such a measure tends to be an exception.⁵⁸

The 2017 law constitutes a serious setback for the development of investment arbitration in Venezuela. It is tantamount to the imposition of a statutory obligation, similar to that resulting from a Calvo clause (which may be described as ‘a corollary of

⁵⁶ It is worth mentioning that article 151 of the Venezuelan Constitution of 1999 is a mirror image of article 127 of the Venezuelan Constitution of 1961, and that the ICSID Convention was ratified under the latter. In *Exploration Round*, the Venezuelan Supreme Court was asked to consider whether arbitration clauses included in public interest contracts were unconstitutional. The Supreme Court held that they were not. Nonetheless, it ‘did little to clarify the ambiguity surrounding the “nature of the contract” exception’. Interestingly, in *Minera las Cristinas*, the Supreme Court relied on article 151 of the 1999 Constitution and, effectively, departed from its previous decision in *Exploration Round*, see, in particular, Bernardo Cremades, ‘Resurgence of the Calvo Doctrine in Latin America’ (2006) 7(1) *Business Law International* 65-67; Wenhua Shan, ‘From North-South Divide to Private-Public Debate: Revival of the Calvo Doctrine and the Changing Landscape in International Investment Law’ (2007) 27(3) *Northwestern Journal of International Law & Business* 647-650.

⁵⁷ Ley Constitucional de Inversión Extranjera Productiva (Gaceta Oficial No. 41.310, del 29/12/2017), as per article 6.

⁵⁸ Martin Dietrich Brauch, *Exhaustion of Local Remedies in International Investment Law* (International Institute for Sustainable Development 2017) 7.

the Calvo Doctrine'), whose origin can be traced back to the 19th century and according to which: 'aliens shall resort to local remedies [for] the settlement of disputes ... and shall further waive the diplomatic intervention of [their] own government'.⁵⁹

It is interesting to note that, according to some scholars, the Calvo doctrine – which is commonly attributed to Carlos Calvo, an Argentinian national, and the author of a 1896 treatise in which he pleaded for 'recognition of the general principle of submission of foreign subjects to the local law'⁶⁰ – was first expressed by Andres Bello, a Venezuelan-born scholar, in a manuscript published in 1832, where he advanced the proposition that 'upon entering a foreign State an alien "agrees tacitly to be subject to the local laws and jurisdiction"'.⁶¹

The Calvo-doctrine point is far from academic. As Professors Baker and Yoder explicate: 'the Calvo doctrine requires that legal disputes involving foreigners doing business in a country which recognizes this doctrine be resolved by local remedies rather than by international legal remedies'.⁶² Such a requirement stands in stark contrast to one of the purposes of investor-state arbitration, i.e., 'to avoid the use of local courts [which are] often seen as lacking the objectivity that the investor desires'.⁶³

When examining the application of the Calvo doctrine, in particular, it is important to highlight that, according to some early commentators, even Carlos Calvo himself appeared to be of the opinion that where 'the courts are notoriously under the control of an unprincipled dictator, so that an appeal to them would be a mockery and sham, it would indeed be a perversion of justice for an alien to be confined to his remedy in them even though a citizen of the country should have no other'.⁶⁴

In any event, it is clear that those legislative measures are unlikely to be popular among foreign investors, particularly in a country where the President of the Supreme Court has been indicted by a US court for receiving 'money or property as bribery payments to influence the outcome of civil and criminal cases'⁶⁵ and, perhaps more

⁵⁹ Manuel R. Garcia-Mora, 'The Calvo Clause in Latin American Constitutions and International Law' (1950) 33(4) *Marquette Law Review* 205-206. It is said that the Calvo clause could also be interpreted as 'a contractual stipulation to exhaust local remedies within a limited sphere', A. H. Feller, 'Some Observations on the Calvo Clause' (1933) 27(3) *American Journal of International Law* 462. For a similar view, see Lionel Morgan Summers, 'The Calvo Clause' (1933) 19(5) *Virginia Law Review* 460-461 (at footnote 3).

⁶⁰ Alwyn V. Freeman, 'Recent Aspects of the Calvo Doctrine and the Challenge to International Law' (1946) 40(1) *American Journal of International Law* 132-133.

⁶¹ Frank Griffith Dawson, 'The Influence of Andres Bello on Latin-American Perceptions of Non-Intervention and State Responsibility' (1986) 57(1) *British Yearbook of International Law* 287.

⁶² James C. Baker and Lois J. Yoder, 'ICSID and the Calvo Clause a Hindrance to Foreign Direct Investment in LDCs' (1989) 5(1) *Ohio State Journal on Dispute Resolution* 75.

⁶³ Christoph Schreuer, 'Calvo's Grandchildren: The Return of Local Remedies in Investment Arbitration' (2005) 4(1) *Law and Practice of International Courts and Tribunals* 1.

⁶⁴ Percy Bordwell, 'Calvo and the Calvo Doctrine' (1906) 18(7) *Green Bag* 380.

⁶⁵ United States Department of State, 'Maikel Jose Moreno Perez' (21 July 2020) <<https://www.state.gov/inl-rewards-program/transnational-organized-crime-rewards-program/maikel-jose-moreno-perez/>> accessed 27 July 2021.

importantly, where '90 per cent or more of citizens report having little or no trust in [the national courts]',⁶⁶ which, no doubt, leaves a lot to be desired.

3. Venezuela's performance in ICSID arbitration proceedings

Shortly after Venezuela withdrew from the ICSID Convention, Sergey Ripinsky, a legal affairs officer at the United Nations Conference on Trade and Development, opined that 'The reasons [appeared] to be more political than legal ... [and that] the government [seemed] to be sending a political message: we think this system is unfair, we disavow it and refuse to cooperate with it in future'. He added that 'The part about the future is very important because it relates to the collection of damages to be ordered by ICSID tribunals against Venezuela'.⁶⁷

Mr Ripinsky also explained that, at the time of its withdrawal, Venezuela had 20 cases pending at ICSID. In a similar vein, Liz Tout and James Langley commented that Venezuela's decision to withdraw from the ICSID Convention may have derived from 'Venezuela's recent experience of international arbitration proceedings. These included an adverse ICC award against PDVSA ... following the nationalisation of the Cerro Negro project, and the threat of an ICSID award relating to the same production area'.⁶⁸

They probably refer to (1) an ICC arbitration involving *Mobil Cerro Negro v PDVSA and PDVSA-CN* (Case No. 15416/JRF of 23/12/11), where the arbitral tribunal 'directed the Respondents ... to pay to Mobil Cerro Negro a sum of US\$746,937,958' plus interest, and also to (2) an ICSID arbitration between *Venezuela Holdings v the Bolivarian Republic of Venezuela* (Case No. ARB/07/27), where the arbitral tribunal ordered Venezuela to pay to the Claimants: (i) US\$9,042,482; (ii) US\$1,411.7 million and (iii) US\$179.3 million in damages.⁶⁹

That might well support the proposition that the real reason behind Venezuela's withdrawal from the ICSID Convention is its discontent with the outcome of some arbitral proceedings. At the time of writing, ICSID's database registers a total of 49 cases against Venezuela, out of which 33 of them have concluded and 16 of them are still pending. It might be useful to look at the outcome of the cases which have been concluded with a view to determining whether Venezuela's withdrawal from the ICSID Convention was a justifiable decision.

⁶⁶ Coralie Pring and Jon Vrush, *Global Corruption Barometer Latin America & The Caribbean: Citizens' Views and Experiences of Corruption* (Transparency International 2019) 11.

⁶⁷ Sergey Ripinsky, 'Venezuela's Withdrawal From ICSID: What it Does and Does Not Achieve' (IISD 13 April 2012) <<https://www.iisd.org/itn/en/2012/04/13/venezuelas-withdrawal-from-icsid-what-it-does-and-does-not-achieve/>> accessed 27 July 2021.

⁶⁸ Liz Tout and James Langley, 'Venezuela's Exit From ICSID' (Dentons 6 March 2012) <<https://www.dentons.com/en/insights/alerts/2012/march/6/venezuelas-exit-from-icsid>> accessed 27 July 2021.

For a similar view, Arbitration Notes, 'Venezuela follows Bolivia and Ecuador with plans to denounce ICSID Convention' (Herbert Smith Freehills 19 January 2012) <<https://hsfnotes.com/arbitration/2012/01/19/venezuela-follows-bolivia-and-ecuador-with-plans-to-denounce-icsid-convention/>> accessed 27 July 2021.

⁶⁹ *Venezuela Holdings, B.V., Mobil Cerro Negro Holding, Ltd., Mobil Venezolana de Petroleos Holdings, Inc., Mobil Cerro Negro, Ltd., and Mobil Venezolana de Petroleos, Inc. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/07/27).

For ease of reference, the outcome of those cases (i.e., concluded cases) has been deliberately grouped according to 5 different categories, namely (1) settled; (2) jurisdiction declined; (3) dismissed; (4) discontinued, and (5) allowed. Table 1 shows the number of arbitral proceedings brought by a number of claimants against Venezuela together with a simplified version of the relevant outcome of those cases (as at 1 September 2021). Table 2 shows a numerical summary of the outcome of such cases (as at 1 September 2021).

Table 1

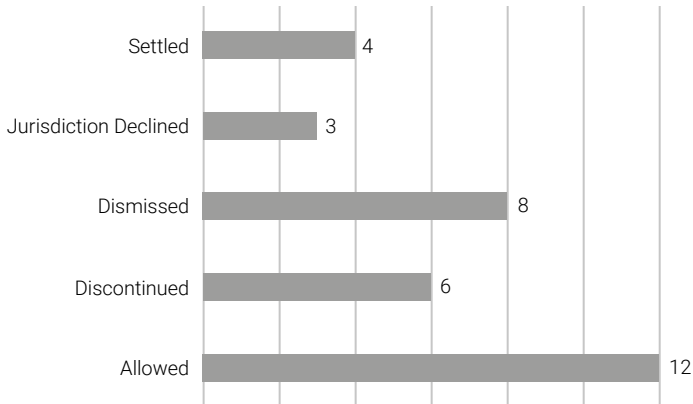
#	CASE NO.	CLAIMANT(S)	OUTCOME
1	ARB/14/10	Highbury International AVV, Compañía Minera de Bajo Caroní AVV, and Ramstein Trading Inc.	DISCONTINUED
2	ARB(AF)/14/1	Anglo American PLC	DISMISSED
3	ARB/12/24	Transban Investments Corp.	DISMISSED
4	ARB/12/23	Tenaris S.A. and Talta - Trading e Marketing Sociedade Unipessoal Lda.	ALLOWED
5	ARB/12/22	Venoklim Holding B.V.	JURISDICTION DECLINED
6	ARB/12/21	Fábrica de Vidrios Los Andes, C.A. and Owens-Illinois de Venezuela, C.A.	DISMISSED
7	ARB/12/20	Blue Bank International & Trust (Barbados) Ltd.	DISMISSED
8	ARB/12/19	Ternium S.A. and Consorcio Siderurgia Amazonia S.L.	DISCONTINUED
9	ARB/12/18	Valle Verde Sociedad Financiera S.L.	DISCONTINUED
10	ARB/12/13	Saint-Gobain Performance Plastics Europe	ALLOWED
11	ARB(AF)/12/5	Rusoro Mining Ltd.	ALLOWED
12	ARB/11/31	Gambrinus, Corp.	DISMISSED
13	ARB/11/30	Hortensia Margarita Shortt	DISCONTINUED
14	ARB/11/26	Tenaris S.A. and Talta - Trading e Marketing Sociedade Unipessoal Lda.	ALLOWED
15	ARB/11/25	OI European Group B.V.	ALLOWED
16	ARB/11/10	The Williams Companies, International Holdings B.V., WilPro Energy Services (El Furril) Limited and WilPro Energy Services (Pigap II) Limited	SETTLED
17	ARB(AF)/11/2	Crystallex International Corporation	ALLOWED
18	ARB(AF)/11/1	Nova Scotia Power Incorporated	DISMISSED
19	ARB/11/1	Highbury International AVV and Ramstein Trading Inc.	DISMISSED
20	ARB/10/19	Flughafen Zürich A.G. and Gestión e Ingeniería IDC S.A.	ALLOWED
21	ARB/10/14	Opic Karimum Corporation	JURISDICTION DECLINED
22	ARB/10/9	Universal Compression International Holdings, S.L.U.	SETTLED

Why Should Venezuela Re-Join the ICSID Convention?
JULIO-CÉSAR BETANCOURT

23	ARB/10/5	Tidewater Investment SRL and Tidewater Caribe, C.A.	ALLOWED
24	ARB(AF)/09/1	Gold Reserve Inc.	ALLOWED
25	ARB/08/15	CEMEX Caracas Investments B.V. and CEMEX Caracas II Investments B.V.	SETTLED
26	ARB/08/3	Brandes Investment Partners, LP	JURISDICTION DECLINED
27	ARB/07/4	Eni Dación B.V.	SETTLED
28	ARB/06/4	Vestey Group Ltd	ALLOWED
29	ARB/05/4	I&I Beheer B.V.	DISCONTINUED
30	ARB(A)/04/6	Vannessa Ventures Ltd.	DISMISSED
31	ARB/00/5	Autopista Concesionada de Venezuela, C.A.	ALLOWED
32	ARB/00/3	GRAD Associates, P.A.	DISCONTINUED
33	ARB/96/3	Fedax N.V.	ALLOWED

Table 2

NUMERICAL SUMMARY OF CASES (as at 1 September 2021) *



* Including cases brought under both the ICSID Convention (n 27) and ICSID Additional Facility (n 6).

When the above data is transformed into percentages, it can be seen that of those 33 ICSID claims brought against Venezuela: (1) 12.12% were settled; (2) 9.09% terminated by means of an award declining jurisdiction to hear the relevant claims; (3) 24.24% were dismissed; (4) 18.18% were discontinued; and (5) 36.36% resulted in unfavourable awards. It is important to note that, by the end of 2011, the year before Venezuela decided to withdraw from the ICSID Convention, there were no signs of "institutional bias", as it were, against Venezuela either.⁷⁰

Thus, the Venezuelan government's criticisms of ICSID (or the ICSID Convention) would appear to be unfounded. As some commentators have put it: 'The ICSID Convention provides the benefit of a fixed set of rules and the support of an experienced arbitral institution, coupled with the flexibility and autonomy usually associated with the advantages of arbitration'.⁷¹ But the Convention has also contributed to the creation of a fair and unbiased dispute settlement forum specially designed to tackle disputes between States and foreign investors.⁷²

It has been argued that 'ICSID has become a symbol of investor-state arbitration that some countries have opposed for political reasons'.⁷³ Hence Mr Ripinsky is probably right to suggest that Venezuela's decision to withdraw from the ICSID Convention was a political decision, that is, a decision which was taken under Chavez's administration in the aftermath of an ICC arbitration resulting from an expropriation campaign that would later give rise to further claims against Venezuela before an ICSID tribunal.

4. What can be learned from Ecuador's decision to re-join the ICSID convention?

It will be recalled that Venezuela's withdrawal from the ICSID Convention was preceded by that of Ecuador. The background to this can be summarised as follows: Ecuador originally ratified the ICSID Convention in 1986. The idea was to 'attract and promote' FDI. In 2007, Ecuador notified ICSID that it would no longer 'consent to submit to the jurisdiction [of ICSID] the disputes that arise in matters concerning the treatment of an investment in economic activities related to the exploitation of natural resources, such as oil, gas, minerals or others'.⁷⁴

⁷⁰ As at 31 December 2011, there were only six concluded cases. The outcome of those cases was the following: (1) ARB/08/3 *Brandes Investment Partners, LP* (jurisdiction declined); (2) ARB/07/4 *Eni Dación B.V.* (settled); (3) ARB/05/4 *I&I Beheer B.V.* (discontinued); (4) ARB/00/5 *Autopista Concesionada de Venezuela, C.A.* (allowed); (5) ARB/00/3 *GRAD Associates, P.A.*; and (6) ARB/96/3 *Fedax N.V.* (allowed).

⁷¹ August Reinisch and Loretta Malintoppi, 'Methods of Dispute Resolution' in Peter T. Muchlinski, Federico Ortino, and Christoph Schreuer (eds), *The Oxford Handbook of International Investment Law* (Oxford University Press 2008) 698.

⁷² ICSID, *Report of the Executive Directors on the Convention* (International Bank for Reconstruction and Development 18 March 1965) 40.

⁷³ Diana Marie Wick, 'The Counter-Productivity of ICSID Denunciation and Proposals for Change' (2012) 11(2) *The Journal of International Business & Law* 290.

⁷⁴ Xavier Andrade Cadena and Marco Tulio Montanes, 'Ecuador's Notice Under ICSID Article 25(4)' (2008) 47(2) *International Legal Materials* 154-155.

In 2008, Ecuador took the (certainly unusual) step of amending its Constitution in order to prohibit the use of arbitration ‘in disputes involving contracts or trade between the State and natural persons or legal entities’.⁷⁵ On 2 July 2009, President Rafael Correa signed an executive order to the same effect (Executive Order No. 1823)⁷⁶ and, on 6 July 2009, Ecuador submitted its withdrawal notice.⁷⁷ Then, ‘On May 16, 2017, Ecuador announced that it [had decided to terminate] all of its bilateral investment treaties’.⁷⁸

However, on 21 June 2021, Ivonne Juez Abuchacra de Baki, Ecuador’s Ambassador to the United States, re-signed the ICSID Convention. In doing so, the government’s message appeared to be that ‘the country [was] once again open and willing to comply with its commitments towards foreign investors...’.⁷⁹ As to that, Meg Kinnear, ICSID Secretary-General, said that ‘Ecuador’s signing of the ICSID Convention ... [confirmed] the country’s commitment to strengthen its investment climate’.⁸⁰

Ecuador’s decision was said to be the result of President Guillermo Lasso’s new government plan, which ‘seeks for Ecuador to become a magnet for investment, and states that new BITs and free trade agreements are needed, as well as the ratification, adhesion and respect for international dispute resolution mechanisms’.⁸¹ Some argued that Ecuador had also made a political volte-face from ‘previous governments, which had dismissed investment treaties and [investment arbitration] as being onerous and unnecessary to attract investment’.⁸²

⁷⁵ As per article 422 of the Constitution of Ecuador (2008), which provides, inter alia, that: ‘Treaties or international instruments where the Ecuadorian State yields its sovereign jurisdiction to international arbitration entities in disputes involving contracts or trade between the State and natural persons or legal entities cannot be entered into’, *Constitute*, accessed 27 July 2021.

⁷⁶ Joshua M. Robbins, ‘Ecuador withdraws from ICSID Convention’ (Practical Law 12 August 2009) <<https://uk.practicallaw.thomsonreuters.com/>> accessed 27 July 2021.

⁷⁷ ICSID (n 16).

⁷⁸ Cynthia Urda Kassis, Christopher M. Ryan, and Alexandro M. Padres, ‘Ecuador Rejoins ICSID: Implications for Investors’ (Shearman & Sterling 19 July 2021) <<https://www.shearman.com/Perspectives/2021/07/Ecuador-Rejoins-ICSID-Implications-for-Investors>> accessed 27 July 2021.

⁷⁹ Daniela Páez-Salgado and Emily Westphalen, ‘Ecuador Signs the ICSID Convention: Next Steps for Entry Into Force’ (Kluwer Arbitration Blog 30 June 2021) 3.

⁸⁰ ICSID, ‘Ecuador Signs the ICSID Convention’ (21 June 2021) <<https://icsid.worldbank.org/news-and-events/news-releases/ecuador-signs-icsid-convention>> accessed 27 July 2021.

⁸¹ Jonathan C. Hamilton, Francisco Jijón and Pedro José Izquierdo, ‘The Return of Investment Protections in Ecuador’ (White & Case LLP 25 June 2021) <<https://www.whitecase.com/publications/alert/return-investment-protections-ecuador>> accessed 27 July 2021.

⁸² Volterra Fietta, ‘Back to the future – Ecuador (re-)signs the ICSID Convention, admitting the failure of its policy of trying to attract foreign investment whilst simultaneously rejecting investment treaties and international arbitration’ (16 July 2021) <<https://www.volterrafieta.com/back-to-the-future-ecuador-re-signs-the-icsid-convention-admitting-the-failure-of-its-policy-of-trying-to-attract-foreign-investment-while-simultaneously-rejecting-investment-treaties-an/>> accessed 27 July 2021.

The ICSID Convention was eventually ratified by President Lasso on 21 June 2021 (as per Executive Order No. 122). Ecuador's ratification of the ICSID Convention was subject to the Ecuadorian Constitutional Court's authorisation,⁸³ which decided that it did 'not require legislative approval or a prior binding opinion of constitutionality'.⁸⁴ Accordingly, it can be said that Ecuador has set an important precedent, not only for Venezuela, but also for Bolivia⁸⁵ and any other Latin-American country considering withdrawing from the Convention.⁸⁶

5. The relationship between ICSID's dispute settlement system and the outcome of arbitral proceedings

The system developed under the ICSID Convention has been adopted by a large number of countries and, therefore, it can be argued that it has secured a considerably high level of legitimacy. Yet the system also has its detractors.⁸⁷ These include certain 'Latin American Governments, the Government of Australia, the European Parliament (or some elements therein) and a number of NGOs'.⁸⁸ It would be beyond the scope of this article to present a review of the claims made by ICSID's detractors.⁸⁹

Suffice it to say that no dispute settlement system is perfect, and the ICSID Convention's system is no exception. Georges Delaume once said that 'ICSID arbitration is intended to maintain a careful balance between the interests of investors and those of Contracting States'.⁹⁰ However, that careful-balance aspiration will always be fraught

⁸³ See Gustavo Prieto, 'Ecuador returns to the ICSID Convention: A brief assessment of its decade-long international investment law "exit strategy"' (Blog of the European Journal of International Law 19 July 2021) <<https://www.ejiltalk.org/>> accessed 27 July 2021. See also, Noticias, 'Ocho días hábiles tiene Corte Constitucional para resolver si Asamblea debe pronunciarse sobre retorno al Ciadi' *El Universo* (23 June 2021) <<https://www.eluniverso.com/noticias/economia/corte-constitucional-decidira-si-asamblea-debe-pronunciarse-sobre-el-ciadi-en-ochos-dias-habiles-nota/>> accessed 27 July 2021.

⁸⁴ News Ticker, 'President of Ecuador ratifies the return of the country to ICSID' *Pichincha Communications* (19 July 2021) <<https://english.pichinchacomunicaciones.com.ec/2021/07/19/president-of-ecuador-ratifies-the-return-of-the-country-to-icsid/>> accessed 27 July 2021.

⁸⁵ For a blogpost on Bolivia's situation after its withdrawal from the ICSID Convention, see José Carlos Bernal Rivera and Mauricio Viscarra Azuga, 'Life after ICSID: 10th anniversary of Bolivia's withdrawal from ICSID' (Kluwer Arbitration Blog 12 August 2017) 1-5.

⁸⁶ The late Emmanuel Gaillard once wrote that: 'all members of Alternativa Bolivariana para Las Américas y El Caribe, or ALBA, expressed their intention to denounce the ICSID Convention at the ALBA Fifth Summit in April 2007', Emmanuel Gaillard, 'Anti-Arbitration Trends in Latin America' (2008) 239(108) *New York Journal* 1.

⁸⁷ In the context of Latin America, it has been argued that there appears to be an atmosphere of hostility towards ICSID and not towards the use of arbitration, Fernando Mantilla-Serrano, '¿Existe Hostilidad Hacia el Arbitraje de Inversión en América Latina?' in Miguel Angel Fernandez-Ballesteros and David Arias Lozano (eds), *Liber Amicorum Bernardo Cremades* (La Ley 2010) 804.

⁸⁸ Christoph Schreuer, 'Keynote Address: Why Still ICSID?' *Summary Procedures, Annulment Proceedings and the Future of ICSID Arbitration* (British Institute of International and Comparative Law 2011) 1.

⁸⁹ For an analysis of some of the criticisms levelled at ICSID, see, for example, Yarik Kryvoi, *International Centre for Settlement of Investment Disputes (ICSID)* (4th edn, Kluwer Law International 2020) 189-206; Leon E. Trakman, 'The ICSID Under Siege' (2012) 45 *Cornell International Law Journal* 603-665.

⁹⁰ Georges R. Delaume, 'ICSID Arbitration' in Julian David Mathew Lew (ed), *Contemporary Problems in International Arbitration* (Springer 1987) 24.

with a potential risk, in the sense that the greater the number of adverse decisions against some Contracting States, the higher the level of dissatisfaction with the system is likely to be.⁹¹

But there is a fundamental flaw in such reasoning, not least because those decisions are made under the aegis of – and not by – ICSID. In other words, those decisions are made by arbitral tribunals composed of (more often than not) highly experienced arbitrators who have made a career in international arbitration. And, as Stephen M. Schwebel once wrote: ‘An international investment arbitrator of ability and integrity will decide the case before him or her on the basis of the facts and governing law’.⁹²

The same can be said with regard to any other form of investment (or commercial) arbitration between one or more foreign investors and a host state, whether conducted under the auspices of ICSID⁹³ or any other institutional or ad hoc arbitral setting. This is so irrespective of the source of the rights and obligations in question (a treaty, a contract or domestic law).⁹⁴ Thus, the outcome of these kinds of arbitral proceedings is not in any way influenced by the forum in which the dispute is ultimately resolved.⁹⁵

A few years ago, Professor Susan D. Franck looked at the percentage of winners and losers in investment treaty cases. In her research, she concluded, among other things, that ‘Out of the fifty-two awards finally resolving treaty claims, there were twenty awards (38.5%) where investors won and tribunals awarded damages. By contrast, there were thirty awards (57.7%) where governments paid investors nothing. There were also two awards embodying settlement agreements’.⁹⁶

More recent research shows that, on the whole, ‘States generally prevail in investment treaty arbitration more often than investors’.⁹⁷ In a study involving 528 concluded arbitrations (as per UNCTAD data), it was shown that ‘In 185 instances [(35%)], the State prevailed or no damages were payable by the State despite an adverse

⁹¹ Although ‘threats of some Latin American countries to withdraw from the system, wholly or partially, may [also] lead business people to question the stability of the current system’, Louis T. Wells, ‘Backlash to Investment Arbitration: Three Causes’ in Michael Waibel and others (eds), *The Backlash against Investment Arbitration* (Kluwer Law International 2010) 352.

⁹² Stephen M. Schwebel, ‘A BIT about ICSID’ (2008) 23(1) ICSID Review 6.

⁹³ Susan D. Franck, *Arbitration Costs: Myths and Realities in Investment Treaty Arbitration* (Oxford University Press 2019) 110.

⁹⁴ See Bernardo Cremades and David J. A. Cairns, ‘Contract and Treaty Claims and Choice of Forum in Foreign Investment Disputes’ in Norbert Horn and Stefan Michael Kroll (eds), *Arbitrating Foreign Investment Disputes: Procedural and Substantive Legal Aspects, Studies in Transnational Economic Law*, vol 19 (Kluwer Law International 2004) 325-351.

⁹⁵ Although, in some cases, ‘the outcome of the dispute may sometimes greatly depend on the rules determined to be applicable’, Yas Banifatemi, ‘The Law Applicable in Investment Treaty Arbitration’ in Katia Yannaca-Small (ed), *Arbitration under International Investment Agreements: A Guide to the Key Issues* (Oxford University Press, 2010) 192.

⁹⁶ Susan D. Franck, ‘Empirically Evaluating Claims About Investment Treaty Arbitration’ (2007) 86(1) North Carolina Law Review 49.

⁹⁷ Emmanuel Gaillard and Ilija Mitrev Penusliski, ‘State Compliance with Investment Awards’ (2021) ICSID Review 45.

ruling on liability. Some 170 arbitrations [(32%)] resulted in a damages award in favor of the investor [and that claims were] withdrawn or settled prior to an award of damages in 173 arbitrations [(33%)].⁹⁸

No amount of proof to the contrary is likely to satisfy those who assume that ICSID tribunals tend to support one party's interests over another. These types of assumptions are nothing more than an unrealistic portrayal of ICSID's role. If that were so, it is evident that ICSID would have failed in its mission to 'maintain a careful balance between the interests of investors and those of host States'.⁹⁹ But, regardless of the system's imperfections, there is no evidence to suggest that ICSID has a hidden agenda to control the outcome of arbitral proceedings.

CONCLUSIÓN

Professor Iain Stewart comments that 'crude oil is a fuel which has come to dominate both our daily lives and the modern world'.¹⁰⁰ Whilst Venezuela continues to have billions of proven oil reserves, most of them consist of extra-heavy crude oil. The production of this type of oil will require a significant amount of financial and technical resources,¹⁰¹ which the country does not currently have. Thus, the recovery of Venezuela's oil industry (in particular) and the country's economy (in general) demands a significant inflow of foreign investment.¹⁰²

Today's political and economic climates do not seem to be ripe for investing in the country. By re-joining the ICSID Convention, however, Venezuela might be able to somewhat restore foreign investors' confidence in the Venezuelan oil market. There is no cast-iron guarantee that the resumption of Venezuela's membership of ICSID will lead to a tsunami of deals with foreign investors, nor is it a complete solution to the country's numerous problems and let alone the only way to attract foreign investors,¹⁰³ but it might be a step in the right direction.

Access to ICSID does not mean that Venezuela's interests must be sacrificed at the altar of the country's economic growth. Nor does that mean that Venezuela must cede control of the oil industry to foreign investors. It simply means that foreign investors will

⁹⁸ *ibid.*

⁹⁹ ICSID (n 72) 41.

¹⁰⁰ Iain Stewart, 'When did planet Earth become Planet Oil?' (BBC News 10 February 2015) <<https://www.bbc.co.uk/news/uk-scotland-31169878>> accessed 27 July 2021.

¹⁰¹ Robert Rapier, 'Charting The Decline Of Venezuela's Oil Industry' (Forbes 29 January 2019) <www.forbes.com> accessed 27 July 2021.

¹⁰² For a similar view, Peter Millard and others, 'A Timeline of Venezuela's Economic Rise and Fall' (Bloomberg 16 February 2019) <<https://www.bloomberg.com/graphics/2019-venezuela-key-events/>> accessed 27 July 2021.

¹⁰³ Brazil, for example, 'has created the conditions for a positive investment climate without making any international commitment to foreign investors', Omar E. García-Bolívar, 'Sovereignty vs. Investment Protection: Back to Calvo?' (2009) 24(2) ICSID Review 474.

be able to resolve any future dispute arising out of or in connection with their investment without recourse to the national courts. It also means that the parties would be capable of resolving their problems on a level playing field (i.e., in a neutral forum) and, above all, free from political interference.

After all, that was one of the major tenets behind the establishment of ICSID, i.e., ‘to “depoliticize” the settlement of investment disputes’.¹⁰⁴ In a country where decisions appear to be mostly driven by party politics rather than the public good, the restoration of foreign investors’ confidence may not be the highest priority on the government’s agenda. Yet as more and more nations look out for renewable energy sources, the return to ICSID might well be one of the most expedient measures to revive – if not rescue – Venezuela’s economy.

BIBLIOGRAPHY

- ANDRADE CADENA, Xavier and MONTANES, Marco Tulio, ‘Ecuador’s Notice Under ICSID Article 25(4)’ (2008) 47(2) *International Legal Materials* 154-155.
- ARBITRATION NOTES, ‘Venezuela follows Bolivia and Ecuador with plans to denounce ICSID Convention’ (Herbert Smith Freehills 19 January 2012) <<https://hsfnotes.com/arbitration/2012/01/19/venezuela-follows-bolivia-and-ecuador-with-plans-to-denounce-icsid-convention/>> accessed 28 September 2021.
- BAKER, James C. and YODER, Lois J., ‘ICSID and the Calvo Clause a Hindrance to Foreign Direct Investment in LDCs’ (1989) 5(1) *Ohio State Journal on Dispute Resolution* 75.
- BANIFATEMI, Yas, ‘Defending Investment Treaty Awards: Is There an ICSID Advantage?’ in Albert Jan Van den Berg (ed), *50 Years of the New York Convention: ICCA Congress Series*, vol 14 (Kluwer Law International 2009) 318-326.
- BANIFATEMI, Yas, ‘The Law Applicable in Investment Treaty Arbitration’ in Katia Yannaca-Small (ed), *Arbitration under International Investment Agreements: A Guide to the Key Issues* (Oxford University Press, 2010) 192.
- BBC NEWS, ‘Venezuela: All you need to know about the crisis in nine charts’ (4 February 2019) <<https://www.bbc.co.uk/news/world-latin-america-46999668>> accessed 28 September 2021.
- BERNAL RIVERA, José Carlos and VISCARRA AZUGA, Mauricio, ‘Life after ICSID: 10th anniversary of Bolivia’s withdrawal from ICSID’ (Kluwer Arbitration Blog 12 August 2017) 1-5.
- BONNITCHA, Jonathan, SKOVGAARD POULSEN, Lauge N. and WAIBEL, Michael, *The Political Economy of the Investment Treaty Regime* (Oxford University Press 2017) 5, 24.
- BORDWELL, Percy, ‘Calvo and the Calvo Doctrine’ (1906) 18(7) *Green Bag* 380.
- BRAUCH, Martin Dietrich, *Exhaustion of Local Remedies in International Investment Law* (International Institute for Sustainable Development 2017) 7.
- CADTM, ‘Gobierno Bolivariano denuncia convenio con CIADI’ (28 January 2012) <<http://www.cadtm.org/Gobierno-Bolivariano-denuncia>> accessed 28 September 2021.

¹⁰⁴ Ibrahim F. I. Shihata, ‘Towards a Greater Depoliticization of Investment Disputes: The Roles of ICSID and MIGA’ (1986) 1(1) *ICSID Review* 4.

- CARLSON, Hugh, CHAEVITCH, Anton and SNODGRASS, Elizabeth, 'Three Notable Issues from the Venezuela Experience' in Gloria Maria Alvarez, Melanie Riofrio Piché, and Felipe V. Sperandio (eds), *International Arbitration in Latin America: Energy and Natural Resources Disputes* (Kluwer Law International 2021) 329-348.
- CARRIL-CACCIA, Federico, MILGRAM-BALEIX, Juliette and PANIAGUA, Jordi, 'Foreign Direct Investment in oil-abundant countries: The role of institutions' (2019) 14(4) PLoS ONE 8.
- CENTRAL INTELLIGENCE AGENCY, 'The World Factbook: Venezuela' <<https://www.cia.gov/the-world-factbook/countries/venezuela/#economy>> accessed 28 September 2021.
- CNN WIRE STAFF, 'Chavez says he won't respect World Bank panel's decision' *CNN Business* (9 January 2012) <<https://edition.cnn.com/2012/01/09/business/venezuela-exxon/index.html>> accessed 28 September 2021.
- CONSTITUTE, 'accessed 28 September 2021.
- CONSTITUTE, '<www.constituteproject.org> accessed 28 September 2021.
- CORRALES, Javier, 'Venezuela in the 1980s, the 1990s and beyond' (Harvard Review of Latin America 1999) <<https://archive.revista.drclas.harvard.edu/book/venezuela-1980s-1990s-and-beyond>> accessed 28 September 2021.
- CREMADES, Bernardo and CAIRNS, David J. A., 'Contract and Treaty Claims and Choice of Forum in Foreign Investment Disputes' in Norbert Horn and Stefan Michael Kroll (eds), *Arbitrating Foreign Investment Disputes: Procedural and Substantive Legal Aspects, Studies in Transnational Economic Law*, vol 19 (Kluwer Law International 2004) 325-351.
- CREMADES, Bernardo, 'Resurgence of the Calvo Doctrine in Latin America' (2006) 7(1) *Business Law International* 65-67.
- DAWSON, Frank Griffith, 'The Influence of Andres Bello on Latin-American Perceptions of Non-Intervention and State Responsibility' (1986) 57(1) *British Yearbook of International Law* 287.
- DELAUME, Georges R., 'ICSID Arbitration' in Julian David Mathew Lew (ed), *Contemporary Problems in International Arbitration* (Springer 1987) 24.
- DOLZER, Rudolf and SCHREUER, Christoph, *Principles of International Investment Law* (2nd edn, Oxford University Press 2012) 235.
- FELLER, A. H., 'Some Observations on the Calvo Clause' (1933) 27(3) *American Journal of International Law* 462.
- FISHER, Max and TAUB, Amanda, 'How Venezuela Stumbled to the Brink of Collapse' *The New York Times* (14 May 2017) <<https://www.nytimes.com/2017/05/14/world/americas/venezuela-collapse-analysis-interpreter.html>> accessed 28 September 2021.
- FISHER, Max and TAUB, Amanda, 'How Venezuela went from the richest economy in South America to the brink of financial ruin' *The Independent* (21 May 2017) <https://www.independent.co.uk/news/long_reads/how-venezuela-went-richest-economy-south-america-brink-financial-ruin-a7740616.html> accessed 28 September 2021.
- FRANCK, Susan D., 'Empirically Evaluating Claims About Investment Treaty Arbitration' (2007) 86(1) *North Carolina Law Review* 49.
- FRANCK, Susan D., *Arbitration Costs: Myths and Realities in Investment Treaty Arbitration* (Oxford University Press 2019) 110.
- FREEMAN, Alwyn V., 'Recent Aspects of the Calvo Doctrine and the Challenge to International Law' (1946) 40(1) *American Journal of International Law* 132-133.
- GAILLARD, Emmanuel and PENUSLISKI, Ilija Mitrev, 'State Compliance with Investment Awards' (2021) *ICSID Review* 45.

-
- GAILLARD, Emmanuel, 'Anti-Arbitration Trends in Latin America' (2008) 239(108) *New York Journal* 1.
- GAILLARD, Emmanuel, 'The Denunciation of the ICSID Convention' (2007) 237(122) *New York Journal* 1-3.
- GARCÍA-BOLÍVAR, Omar E., 'Sovereignty vs. Investment Protection: Back to Calvo?' (2009) 24(2) *ICSID Review* 474.
- GARCIA-MORA, Manuel R., 'The Calvo Clause in Latin American Constitutions and International Law' (1950) 33(4) *Marquette Law Review* 205-206.
- GUNSON, Phil, 'Hugo Chávez obituary' *The Guardian* (5 March 2013) <<https://www.theguardian.com/world/2013/mar/05/hugo-chavez>> accessed 28 September 2021.
- GUNSON, Phil, 'Rafael Caldera obituary' *The Guardian* (4 January 2010) <<https://www.theguardian.com/theguardian/2010/jan/04/rafael-caldera-obituary>> accessed 28 September 2021.
- HAMILTON, Jonathan C., JIJÓN, Francisco and IZQUIERDO, Pedro José, 'The Return of Investment Protections in Ecuador' (White & Case LLP 25 June 2021) <<https://www.whitecase.com/publications/alert/return-investment-protections-ecuador>> accessed 28 September 2021.
- HERNÁNDEZ, Igor and MONALDI, Francisco, 'Weathering Collapse: An Assessment of the Financial and Operational Situation of the Venezuelan Oil Industry' (2016) Center for International Development at Harvard University Working Paper No. 327, 1-69 <<https://dash.harvard.edu/handle/1/37366358>> accessed 28 September 2021.
- ICSID, 'Database of ICSID Member States' <<https://icsid.worldbank.org/about/member-states/database-of-member-states>> accessed 28 September 2021.
- ICSID, 'Denunciation of ICSID Convention' (16 May 2007) <<https://icsid.worldbank.org/news-and-events/news-releases/denunciation-icsid-convention>> accessed 28 September 2021.
- ICSID, 'Denunciation of the ICSID Convention by Ecuador' (9 July 2009) <<https://icsid.worldbank.org/news-and-events/news-releases/denunciation-icsid-convention-ecuador>> accessed 28 September 2021.
- ICSID, 'Ecuador Signs the ICSID Convention' (21 June 2021) <<https://icsid.worldbank.org/news-and-events/news-releases/ecuador-signs-icsid-convention>> accessed 28 September 2021.
- ICSID, 'The History of the ICSID Convention' <<https://icsid.worldbank.org/resources/publications/the-history-of-the-icsid-convention>> accessed 28 September 2021.
- ICSID, 'Venezuela Submits a Notice under Article 71 of the ICSID Convention' (26 January 2012) <<https://icsid.worldbank.org/news-and-events/news-releases/venezuela-submits-notice-under-article-71-icsid-convention>> accessed 28 September 2021.
- ICSID, *ICSID Caseload – Statistics: Issue 2021-1* (World Bank Group 2021) 8.
- ICSID, *Report of the Executive Directors on the Convention* (International Bank for Reconstruction and Development 18 March 1965) 40.
- JHA, Shreya and SHARMA, Vivek, 'Denunciation under the ICSID Convention: Right of State versus Remedy for Investor' CILJ Blog Post (Edward Elgar Publishing, 26 September 2019) <<http://cilj.co.uk/2019/09/26/denunciation-under-the-icsid-convention-right-of-state-versus-remedy-for-investor/>> accessed 28 September 2021.
- KASSIS, Cynthia Urda, RYAN, Christopher M. and PADRES, Alexandro M., 'Ecuador Rejoins ICSID: Implications for Investors' (Shearman & Sterling 19 July 2021) <<https://www.shearman.com/Perspectives/2021/07/Ecuador-Rejoins-ICSID-Implications-for-Investors>> accessed 28 September 2021.
- KIGER, Patrick J., 'How Venezuela Fell from the Richest Country in South America into Crisis' (History 9 May 2019) <<https://www.history.com/news/venezuela-chavez-maduro-crisis>> accessed 28 September 2021.

- KRYVOI, Yarik, *International Centre for Settlement of Investment Disputes (ICSID)* (4th edn, Kluwer Law International 2020) 189-206.
- KURMANAEV, Anatoly, 'Venezuela's Collapse Is the Worst Outside of War in Decades, Economists Say' *The New York Times* (17 May 2019) <<https://www.nytimes.com/2019/05/17/world/americas/venezuela-economy.html>> accessed 28 September 2021.
- LAMM, Carolyn B. and COHEN SMUTNY, Abby, 'The International Centre for Settlement of Investment Disputes: Responses to Problems and Changing Requirements' (1998) 64(5) *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management* 23.
- LEW, Julian David Mathew, 'ICSID Arbitration: Special Features and Recent Developments', in Norbert Horn and Stefan Michael Kroll (eds), *Arbitrating Foreign Investment Disputes: Procedural and Substantive Legal Aspects, Studies in Transnational Economic Law*, vol 19 (Kluwer Law International 2004) 269.
- MANTILLA-SERRANO, Fernando, '¿Existe Hostilidad Hacia el Arbitraje de Inversión en América Latina?' in Miguel Angel Fernandez-Ballesteros and David Arias Lozano (eds), *Liber Amicorum Bernardo Cremades* (La Ley 2010) 804.
- MARTINEZ ESTEVES, Jaime and VALDIVIESO, Ruben Dario, 'Venezuela: Oil & Gas Laws and Regulations 2021' <<https://iclg.com/practice-areas/oil-and-gas-laws-and-regulations/venezuela>> accessed 28 September 2021.
- McCOY, Jennifer L., 'The Hugo Chávez Presidency', *Encyclopædia Britannica* <<https://www.britannica.com/place/Venezuela/The-Hugo-Chavez-presidency>> accessed 28 September 2021.
- McCOY, Jennifer L., 'The Andinos of Venezuela', *Encyclopædia Britannica* <<https://www.britannica.com/place/Venezuela/The-Andinos>> accessed 28 September 2021.
- MILLARD, Peter and others, 'A Timeline of Venezuela's Economic Rise and Fall' (Bloomberg 16 February 2019) <<https://www.bloomberg.com/graphics/2019-venezuela-key-events/>> accessed 28 September 2021.
- NELSON, Brian A., 'Legacy of Hugo Chávez', *Encyclopædia Britannica* <<https://www.britannica.com/biography/Hugo-Chavez/Legacy>> accessed 28 September 2021.
- NEWTICKER, 'President of Ecuador ratifies the return of the country to ICSID' *Pichincha Communications* (19 July 2021) <<https://english.pichinchacomunicaciones.com.ec/2021/07/19/president-of-ecuador-ratifies-the-return-of-the-country-to-icsid/>> accessed 28 September 2021.
- NITSCHKE, Frauke, 'The ICSID Conciliation Rules in Practice' in Catharine Titi and Katia Fach Gómez (eds), *Mediation in International Commercial and Investment Disputes* (Oxford University Press 2019) Ch 7.
- NOTICIAS, 'Ocho días hábiles tiene Corte Constitucional para resolver si Asamblea debe pronunciarse sobre retorno al Ciadi' *El Universo* (23 June 2021) <<https://www.eluniverso.com/noticias/economia/corte-constitucional-decidira-si-asamblea-debe-pronunciarse-sobre-el-ciadi-en-ocho-dias-habiles-nota/>> accessed 28 September 2021.
- OPEC, 'Venezuela: Facts and Figures' <https://www.opec.org/opec_web/en/about_us/171.htm> accessed 28 September 2021.
- PÁEZ-SALGADO, Daniela and WESTPHALEN, Emily, 'Ecuador Signs the ICSID Convention: Next Steps for Entry Into Force' (Kluwer Arbitration Blog 30 June 2021) 3.
- PARRA, Antonio R. *The History of ICSID* (Oxford University Press 2012) 1.
- PDVSA, 'Somos PDVSA: La Industria' <<http://www.pdvsa.com/>> accessed 28 September 2021.
- POLANCO LAZO, Rodrigo, 'The No of Tokyo Revisited: or How Developed Countries Learned to Start Worrying and Love the Calvo Doctrine' (2015) 30(1) *ICSID Review* 182.

-
- PRIETO, Gustavo, 'Ecuador returns to the ICSID Convention: A brief assessment of its decade-long international investment law "exit strategy"' (Blog of the European Journal of International Law 19 July 2021) <<https://www.ejiltalk.org/>> accessed 28 September 2021.
- PRING, Coralie and VRUSHI, Jon, *Global Corruption Barometer Latin America & The Caribbean: Citizens' Views and Experiences of Corruption* (Transparency International 2019) 11.
- RAPIER, Robert, 'Charting The Decline Of Venezuela's Oil Industry' (Forbes 29 January 2019) <www.forbes.com> accessed 28 September 2021.
- REED, Lucy, PAULSSON, Jan and BLACKABY, Nigel, *Guide to ICSID Arbitration* (2nd edn, Wolters Kluwer 2011) 1-468.
- REINISCH, August and MALINTOPPI, Loretta, 'Methods of Dispute Resolution' in Peter T. Muchlinski, Federico Ortino, and Christoph Schreuer (eds), *The Oxford Handbook of International Investment Law* (Oxford University Press 2008) 698.
- RIPINSKY, Sergey, 'Venezuela's Withdrawal From ICSID: What it Does and Does Not Achieve' (IISD 13 April 2012) <<https://www.iisd.org/itn/en/2012/04/13/venezuelas-withdrawal-from-icsid-what-it-does-and-does-not-achieve/>> accessed 28 September 2021.
- ROBBINS, Joshua M., 'Ecuador withdraws from ICSID Convention' (Practical Law 12 August 2009) <<https://uk.practicallaw.thomsonreuters.com/>> accessed 28 September 2021.
- RODRÍGUEZ LÓPEZ, Jesús Francisco, 'La Apertura Petrolera en Venezuela' (MSc Thesis, Universidad de Los Andes 1992-1995) 25.
- SABAHI, Borzu, RUBINS, Noah and WALLACE, Don, *Investor-State Arbitration* (2nd edn, Oxford University Press 2019) 4-5.
- SANTANDER, 'Venezuela: Foreign Investment' <www.santandertrade.com/en/portal/establish-overseas/venezuela/investing> accessed 28 September 2021.
- SCHREUER, Christoph, 'Calvo's Grandchildren: The Return of Local Remedies in Investment Arbitration' (2005) 4(1) *Law and Practice of International Courts and Tribunals* 1.
- SCHREUER, Christoph, 'Denunciation of the ICSID Convention and Consent to Arbitration' in Michael Waibel and others (eds), *The Backlash Against Investment Arbitration: Perceptions and Reality* (Kluwer Law International 2010) 353-368.
- SCHREUER, Christoph, 'Keynote Address: Why Still ICSID?' *Summary Procedures, Annulment Proceedings and the Future of ICSID Arbitration* (British Institute of International and Comparative Law 2011) 1.
- SCHWEBEL, Stephen M., 'A BIT about ICSID' (2008) 23(1) *ICSID Review* 6.
- SHAN, Wenhua, 'From North-South Divide to Private-Public Debate: Revival of the Calvo Doctrine and the Changing Landscape in International Investment Law' (2007) 27(3) *Northwestern Journal of International Law & Business* 647-650.
- SHIHATA, Ibrahim F. I., 'Towards a Greater Depoliticization of Investment Disputes: The Roles of ICSID and MIGA' (1986) 1(1) *ICSID Review* 4.
- SPANAKOS, Anthony, 'Venezuela Before Chávez: Anatomy of an Economic Collapse by Ricardo Hausmann and Francisco R. Rodríguez' (*Americas Quarterly* 28 July 2014) <<https://www.americasquarterly.org/fulltextarticle/venezuela-before-chavez-anatomy-of-an-economic-collapse-by-ricardo-hausmann-and-francisco-r-rodriguez/>> accessed 28 September 2021.
- STATISTA, 'Crude oil production in Venezuela from January 2019 to February 2021(in 1,000 barrels per day)'<<https://www.statista.com/statistics/1240421/crude-oil-production-monthly-venezuela/>> accessed 28 September 2021.

- STATISTA, 'Distribution of oil reserves worldwide in 2020: By Country' <<https://www.statista.com/statistics/237065/share-of-oil-reserves-of-the-leading-ten-countries/>> accessed 28 September 2021.
- STATISTA, 'Proved crude oil reserves in Venezuela from 2009 to 2021 (in billion barrels)' <<https://www.statista.com/statistics/961643/crude-oil-reserves-venezuela/>> accessed 28 September 2021.
- STATISTA, 'Venezuela: Gross domestic product (GDP) in current prices from 1984 to 2022 (in billion U.S. dollars)' <<https://www.statista.com/statistics/370937/gross-domestic-product-gdp-in-venezuela/>> accessed 28 September 2021.
- STEWART, Iain, 'When did planet Earth become Planet Oil?' (BBC News 10 February 2015) <<https://www.bbc.co.uk/news/uk-scotland-31169878>> accessed 28 September 2021.
- SUMMERS, Lionel Morgan, 'The Calvo Clause' (1933) 19(5) *Virginia Law Review* 460-461 (at footnote 3).
- TEJERA, Victorino J., 'Unraveling ICSID's Denunciation: Understanding the Interaction Between Articles 71 and 72 of the ICSID Convention' (2014) 20(3) *ILSA Journal of International & Comparative Law* 423-438.
- THE EDITORS, 'Juan Vicente Gómez: Venezuelan dictator', *Encyclopædia Britannica* <<https://www.britannica.com/biography/Juan-Vicente-Gomez>> accessed 28 September 2021.
- TOUT, Liz and LANGLEY, James, 'Venezuela's Exit From ICSID' (Dentons 6 March 2012) <<https://www.dentons.com/en/insights/alerts/2012/march/6/venezuelas-exit-from-icsid>> accessed 28 September 2021.
- TRAKMAN, Leon E., 'The ICSID Under Siege' (2012) 45 *Cornell International Law Journal* 603-665.
- UNCTAD, *Denunciation of the ICSID Convention and BITs: Impact On Investor-State Claims* (United Nations 2010) 2 IIA 1-10;
- UNCTAD, *World Investment Report 2021: Investing in Sustainable Recovery* (United Nations 2021) 129.
- UNITED STATES DEPARTMENT OF STATE, 'Maikel Jose Moreno Perez' (21 July 2020) <<https://www.state.gov/inl-rewards-program/transnational-organized-crime-rewards-program/maikel-jose-moreno-perez/>> accessed 28 September 2021.
- VINCENELLI, Ignacio A., 'The Uncertain Future of ICSID in Latin America' (2010) 16(3) *Law and Business Review of the Americas* 409-456.
- VOLTERRA FIETTA, 'Back to the future – Ecuador (re-)signs the ICSID Convention, admitting the failure of its policy of trying to attract foreign investment whilst simultaneously rejecting investment treaties and international arbitration' (16 July 2021) <<https://www.volterrafietta.com/back-to-the-future-ecuador-re-signs-the-icsid-convention-admitting-the-failure-of-its-policy-of-trying-to-attract-foreign-investment-whilst-simultaneously-rejecting-investment-treaties-an/>> accessed 28 September 2021.
- WEISBROT, Mark and SANDOVAL, Luis, *The Venezuelan Economy in the Chávez Years* (Center for Economic and Policy Research 2007) 1-22.
- WELLS, Louis T., 'Backlash to Investment Arbitration: Three Causes' in Michael Waibel and others (eds), *The Backlash against Investment Arbitration* (Kluwer Law International 2010) 352.
- WICK, Diana Marie, 'The Counter-Productivity of ICSID Denunciation and Proposals for Change' (2012) 11(2) *The Journal of International Business & Law* 290.
- WORLD BANK GROUP, *Doing Business Doing Business: 2020 Comparing Business Regulation in 190 Economies* (The World Bank 2020) 4.
- YUSUF, Guled and OWCZAREK, Olga, 'Fábrica de Vidrios Los Andes, CA and Owens-Illinois de Venezuela, CA v Bolivarian Republic of Venezuela Removing the Sword of Damocles: ICSID Denunciation under Articles 71 and 72' (2018) 33(2) *ICSID Review* 331-339.

ICSID AWARDS

ICSID Case No. ARB/11/31
ICSID Case No. ARB/96/3
ICSID Case No. ARB/00/3
ICSID Case No. ARB/00/5
ICSID Case No. ARB(AF)/09/1
ICSID Case No. ARB(AF)/11/1
ICSID Case No. ARB/11/1
ICSID Case No. ARB(AF)/14/1
ICSID Case No. ARB(AF)/11/2
ICSID Case No. ARB/08/3
ICSID Case No. ARB/05/4
ICSID Case No. ARB/06/4
ICSID Case No. ARB/07/4
ICSID Case No. ARB/10/5
ICSID Case No. ARB(AF)/12/5
ICSID Case No. ARB(AF)/04/6
ICSID Case No. ARB/07/27
ICSID Case No. ARB/08/15
ICSID Case No. ARB/10/9
ICSID Case No. ARB/11/10
ICSID Case No. ARB/14/10
ICSID Case No. ARB/10/14
ICSID Case No. ARB/10/19
ICSID Case No. ARB/11/25
ICSID Case No. ARB/11/26
ICSID Case No. ARB/11/30
ICSID Case No. ARB/12/13
ICSID Case No. ARB/12/18
ICSID Case No. ARB/12/19
ICSID Case No. ARB/12/20
ICSID Case No. ARB/12/21
ICSID Case No. ARB/12/22
ICSID Case No. ARB/12/23
ICSID Case No. ARB/12/24

LEGISLATION

CONSTITUCION DE LA REPUBLICA BOLIVARIANA DE VENEZUELA (Gaceta Oficial Extraordinaria No. 36 860 de fecha 30 de diciembre de 1999) – English Versión.

CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR (Registro Oficial 449 de 20 de octubre de 2008) – English Versión.

LEY CONSTITUCIONAL DE INVERSIÓN EXTRANJERA PRODUCTIVA (Gaceta Oficial No. 41 310 de fecha 29 de diciembre de 2017).